



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/759,562	01/16/2004	Prabha Ibrahim	01-0159-CIP2	8096
27716	7590	07/06/2005	EXAMINER	
CV THERAPEUTICS, INC. 3172 PORTER DRIVE PALO ALTO, CA 94304			OWENS, AMELIA A	
			ART UNIT	PAPER NUMBER
			1625	

DATE MAILED: 07/06/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/759,562	Applicant(s) IBRAHIM ET AL.	
	Examiner Amelia A. Owens	Art Unit 1625	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 6/2/2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
4a) Of the above claim(s) 25-27 and 29 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 28 is/are rejected.
- 7) ☒ Claim(s) 2-24 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

PD

Art Unit: 1625

DETAILED ACTION

Claims 1-29 are pending. Claims 25-27, 29 remain withdrawn, 37 CFR 1.142(b).

The double patenting rejections of record have been dropped. Terminal disclaimers have been filed and accepted.

The 35 USC 102 rejections have been dropped as the claims have been amended limiting the definition of X1 to optionally substituted – cycloalkyl, aryl, heteroaryl.

Rejoinder

The method claims 25-27, 29 will be rejoined with the compound claims, so long as they are limited in scope to the allowed subject matter.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 1 and 28 are rejected under 35 U.S.C. 112, first paragraph, because the specification, while being *enabling for V being nitrogen*, does not reasonably provide enablement for *V being CH= or NHCH=*. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make the invention commensurate in scope with these claims.

The specification does not recite starting materials to make compounds where V is CH= or NHCH=. The starting materials are necessary to prepare compounds as set forth in the claims. Further, it is not clear if the same reaction mechanism, reaction conditions would produce compounds where V is CH or NHCH. The specification at pages 20-32 is directed solely to compounds where V is nitrogen.

Art Unit: 1625

Claims 2-24 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Allowable Subject Matter

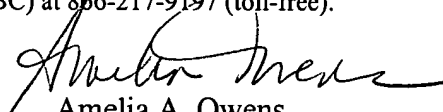
The prior art neither teaches nor suggests the claimed compounds. In the present claims the X1 is *optionally substituted – aryl, cycloalkyl, heteroaryl*.

It is known in the pharmaceutical arts to treat damage to skeletal muscles resulting from trauma, shock, and cardiovascular disease (wherein the cardiovascular disease is atrial arrhythmia, intermittent claudication, ventricular arrhythmia, Prinzmetal's (variant) angina, stable angina, exercise induced angina, congestive heart disease, or myocardial infarction) with the same compound. See Zablocki et al (WO 01/62744 A3) abstract – *of record in copending 10/198237*.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Amelia A. Owens whose telephone number is 571-272-0690. The examiner can normally be reached on Monday - Friday from 8:30 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cecilia Tsang can be reached on 571-272-0562. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Amelia A. Owens
Primary Examiner
Art Unit 1625